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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Situation of human rights in Iraq

Report submitted by the Special Rapporteur,
Mr. Max van der Stoel, in accordance with
Commission resolution 1998/65

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Introduction

1. The present report is submitted pursuant to paragraph 4 (a) of Commission on Human Rights resolution 1998/65.

I. ACTIVITIES OF THE SPECIAL RAPPORTEUR

2. The Special Rapporteur notes that since his first visit to Iraq in January 1992, he has not been allowed to return. The Government of Iraq has refused, since 1993, to respond directly to the Special Rapporteur through correspondence. Moreover, the Government of Iraq has refused to cooperate with United Nations human rights mechanisms by allowing the stationing of human rights monitors throughout Iraq as requested by the resolutions of the General Assembly and the Commission on Human Rights. In assessing the veracity of information received, the Special Rapporteur considers its source or sources, its detail, and its context and then seeks corroborative information. While the Special Rapporteur is not able to determine definitively the veracity of all reports and allegations received, his accumulated experience leads him to conclude that it is important to report serious allegations which are prima facie credible insofar as they are consistent with past events and the established pattern within the country.

3. Notwithstanding the Government of Iraq's refusal to cooperate with the placement of human rights monitors inside Iraq, the Special Rapporteur was able to send a staff member from the Office of the High Commissioner for Human Rights (OHCHR) to Kuwait in order to receive information concerning the fate of Kuwaitis and other persons who disappeared during Iraq's occupation of Kuwait. The fate of this particular group of persons forms part of the mandate of the Special Rapporteur as a result of paragraph 3 (g) of Commission resolution 1998/65.

II. VIOLATIONS OF CIVIL AND POLITICAL RIGHTS

4. During the period under review, the Special Rapporteur continued to receive numerous allegations of human rights violations affecting the Iraqi population living in the southern governorates, the Shiice religious community, the Kurds, as well as referring to a continuous campaign of executions in Iraqi prisons.

A. Extrajudicial, summary or arbitrary executions

5. The Special Rapporteur has already reported on the so-called "prison cleansing" campaign in his last reports to the Commission on Human Rights (E/CN.4/1998/67) and the General Assembly (A/53/433). He continues to receive reports referring to an execution campaign in Abu Ghraib and Radwaniyah prisons, including hundreds of executions in the last months of 1998. In support of these allegations, several lists of names totalling more than 200 detainees executed between October and December 1998 have been made available to the Special Rapporteur, bringing the total number of prisoners said to have been executed since autumn 1997 to 2,500. The lists give information on the identity of the victims including their names, their governorates and districts of origin, their ranks when they are army personnel, their dates of incarceration, as well as the articles of the Penal

Code under which they were convicted and sentenced to death. In some cases, the names of the army officers who have allegedly carried out collective executions is also mentioned.

6. As in the past, the reports indicate that people continue to be sentenced to death and executed because of their alleged participation in the uprising of March 1991. Supporting this allegation, a list of 125 prisoners reportedly executed on 1 October 1998 in Abu Ghraib prison includes 50 persons charged with participating in the 1991 popular uprising. Another list names 11 long-held prisoners who had been convicted for the same reason and were transferred on 23 November 1998 to the execution wing of Abu Ghraib prison awaiting their sentences to be carried out.

7. Another list of 81 prisoners reportedly executed since 13 December 1998 indicates that these detainees were executed on political grounds. The list also specifies that four of the executed were convicted under article 223 of the Penal Code which prescribes the death sentence for any person attempting to kill the President.

8. According to the reports received, membership with or sympathy for illegal political parties or opposition to the Government continues to be punished by the death penalty. The Special Rapporteur has received specific information (citing names, professions, places of origin, and places and dates of execution) alleging the execution of groups of persons for their opposition to the Government. Several of those reportedly executed held ranks in the armed forces, including some at high level. In several cases, it is also reported that the personal properties of those executed (and those of some of their immediate family members) were confiscated.

9. It is to be noted that the above-mentioned lists of 125 and 81 names of executed prisoners specify that the executions involved 29 and 18 army officers, respectively. It is believed that most of these executions are related to alleged opposition to or mutiny against the Iraqi leadership. Supporting these allegations, reports mention that, on 18 December 1998, five officers, including two generals, were executed for attempting a mutiny at the Al-Rasheed military base outside Baghdad. Also, the commander of Iraq's 11th Mechanized Division and an unspecified number of his staff were reportedly executed by General Ali Hassan Al-Majeed, supposedly for their insubordination relating to an order to attack Shiite civilians.

10. Finally, ill-treatment of prisoners and poor conditions of detention continue to be reported and to cause the death of prisoners. In mid-November 1998, 17 detainees reportedly died after being forced to donate blood. Their bodies were subsequently removed to Al-Madain district where they were buried.

B. Violations affecting ethnic and religious communities

1. The population of the southern marsh area

11. With regard to the population living in the southern marshes, there appears to be a resurgence of grave violations of human rights committed by the Government of Iraq.

12. The most blatant violations of human rights reportedly being perpetrated by the Government of Iraq are military attacks against civilian settlements in the southern governorates of Al-Nassiriya, Amara and Basra which are reported to have resumed in late August 1998 and reached a peak in November. As in the past, these military operations have been allegedly related to the purported need to seek out military deserters who had sought refuge within the tribes of the marshes. It is reported that there were repeated, intense artillery and mortar attacks followed by ground-force attacks on villages and towns in several areas of the three governorates, in particular in the Al Jazira area near Al Rifa'i city between Al-Amara, Al-Nassiriya and Kut governorates and in Suq Al Shuyukh and Chibayish districts in Al-Nassiriya governorate. The reports indicate that the operations targeted a large number of tribes, including the Al Jwaibir, Al Rabma, Al Bu Salih and Asakira tribes.

13. It is further reported that the President's son, Qusay Saddam Hussein, and the President's cousin, Ali Hassan Al-Majeed, supervised part of the operations, in particular in late September and early November 1998. The Special Rapporteur notes that Ali Hassan Al-Majeed previously directed military campaigns against populations in the southern marshes as well as the Anfal operations against the Kurds and others in northern Iraq.

14. The Special Rapporteur is of the opinion that such indiscriminate and full-scale attacks are both inconsistent with and disproportionate to the alleged motive of seeking army deserters. They are incompatible with the obligation to provide due process of law inasmuch as they penalize innocent persons and do not provide accused persons with fair trials. Furthermore, they exceed by far the standards detailed in the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and in the Code of Conduct for Law Enforcement Officials. Finally, they clearly violate the right to life and physical integrity included in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

15. According to the information received, numerous other human rights violations followed the military operations, stemming from the repressive measures ordered by the leadership. In particular, it is reported that government forces arrested hundreds of citizens, in particular in the region of Suq Al Shuyukh and Al Rifa'i in the governorate of Al-Nassiriya. One report indicates that in the autumn governmental forces arrested more than 70 persons belonging to the Al Hassan tribe. Reports further indicate that although army deserters were reportedly among the persons arrested, those arrested also included innocent civilians, including the elderly, women and children. Reports also indicate that, on 22 November 1998 (a holy day for the Shiite community), government forces undertook mass arrests of young people in the city of Kerbala where some clashes had broken out. The number of arrests is reported to be in the hundreds with prisoners taken to detention centres in Baghdad and to prisons of the 4th Corps and the Security Directorate in Al-Amara.

16. It is also reported that the very purpose of some of the arrests directly ordered by President Saddam Hussein's son, Qusay, is to intimidate the population of the southern marshes by taking hostages. It is reported

that the concerned relatives, recalling the Anfal operations, fear for the safety and physical integrity of the persons detained incommunicado and whose fates have remained unknown since their arrest.

17. As part of this campaign of repression against the inhabitants of the southern marsh region, reports indicate that government forces have burned houses and fields while other houses have been demolished by bulldozers. In this connection, the Special Rapporteur is in possession of a list of 64 persons, mainly from the Al Jwaibiri tribe, whose houses were razed by government forces. Some reports indicate that villages belonging to the Al Juwaibiri, Al Shumaish and Al Musa and Al Rahma tribes were entirely destroyed. Following the burnings, soldiers are said to have forcibly expelled inhabitants from the burnt areas. Government forces are also said to have confiscated entire villages and community lands with some of them being turned into military outposts. Finally, government forces have reportedly cut the water supply to certain areas, affecting the population, livestock and agriculture. These combined measures have reportedly led to the forced relocation of entire families to other regions, in particular along the border with the Islamic Republic of Iran.

18. As part of the repressive measures, it is reported that the leadership established an ad hoc Executions Committee on the road between Nassiriyah and Suq Al Shuyukh for the purpose of catching and executing insubordinate officers and soldiers who refused to follow orders to beat civilians and had deserted.

19. It is further feared that there were summary executions of numerous persons by hanging or shooting in the governorates of Al-Amara and in Basra in November 1998 subsequent to the visits of Qusay Saddam Hussein and Ali Hassan Al-Majeed. The bodies of three persons executed during this campaign were reportedly seen hanging on Amara bridge.

2. The Shiite community

20. In his interim report to the General Assembly, the Special Rapporteur reported on the murders of two internationally respected Shiite religious scholars: Grand Ayatollah Shaykh Mirza Al-Gharawi and Ayatollah Shaykh Murtada Al-Burujerdi. In a letter addressed to the Government of Iraq, the Special Rapporteur expressed his concern that the murders might be part of an organized attack by the Iraqi Government against the independent leadership of the Shiite community and called upon the Government of Iraq to carry out thorough and impartial investigations. However, the Government of Iraq has not responded to the Special Rapporteur.

21. As part of a policy of intimidation against the religious community, eight Shiite clerics, whose names are available to the Special Rapporteur, have allegedly been recently sentenced to death. Four of them were reportedly charged with participating in ceremonies commemorating Imam Hussein.

22. Moreover, according to information received, the office of Grand Ayatollah Sheikh Bashir Najafi was attacked on 6 January 1999 by a group of armed men while he and members of his seminary were performing

religious duties. The attack, which included use of a hand-grenade, resulted in the death of three persons and injury to a number of members of the seminary, including the Grand Ayatollah.

23. In view of the systematic assassinations, attacks and threats carried out against the Shiite leadership since the March 1991 uprisings, it is believed that the recent attack against Grand Ayatollah Sheikh Bashir Najafi is part of a planned policy aimed at discouraging religious leaders from freely expressing their opinions and religious beliefs. The Special Rapporteur recalls that the fates of more than 100 clerics and religious scholars who were taken into custody by the Government in 1991 have not been clarified.

3. The Kurds

24. Since the submission of his previous report to the Commission on Human Rights, the Special Rapporteur has continued to receive allegations describing the deteriorating human rights situation of the Kurds of the governorate of Kirkuk. In particular, the Government of Iraq continues to implement its policy of Arabization through a process of internal deportation aimed at the forced relocation of the non-Arab population, especially the Kurds, Turkmen and Assyrians living in Kirkuk. However, simultaneous campaigns are reportedly also under way in the districts of Khanaqin, Makhmour, Sinjar and Sheikhan.

25. Reports of discriminatory measures against non-Arab citizens and forced Arabization are believed to be part of a general policy aimed at decreasing the proportion of non-Arab citizens in the oil-rich region of Kirkuk. Non-Arab citizens are reportedly denied equal access to employment and educational opportunities and are also physically threatened. For example, employment in the public administration, including the national petroleum company (the largest employer in the region), is reportedly effectively reserved for citizens of Arab origin. Deterrent measures such as relocation of Kurdish elementary schoolteachers and low-ranking civil servants to areas outside Kirkuk are also part of the regime's policy of modifying the demography of the region.

26. Other discriminatory measures are applied by the local administration of Kirkuk: Kurds are reportedly not permitted to sell their homes to anyone other than Arabs. New construction or renovation of Kurdish property is said to be forbidden and Kurds are prevented from registering or inheriting properties. At the same time, Arab settlement is favoured. The Revolution Command Council has mandated that the State must provide new housing and employment to more than 300,000 Arab residents resettled in Kirkuk. In the past several months, at least seven new Arab settlements have been built in Kurdish areas on properties confiscated mainly from ethnic Kurds. The new settlements are given Arab names and local merchants are instructed to give their companies Arab names. Finally, the governorate's administrative offices are being moved to the Arabized side of the city, as are the headquarters of major professional and political organizations.

27. As part of the Arabization process, the Government of Iraq continues to deport Kurdish and Turkmen families. Correspondence dated 13 July 1998

between the Confidential Correspondence Section of the governorate of Al Ta'ameem and the Leadership of the Al Ta'ameem Branch of the Ba'ath Socialist Party made available to the Special Rapporteur shows that this local administration was responsible for the deportation of 545 families "recently included in the deportation process". Other Kurdish families are being transferred to southern governorates. Moreover, it is reported that Kurds who leave Kirkuk are not allowed to return. The Special Rapporteur is in possession of a copy of correspondence dated 7 January 1998 from the Governor of Diyala to the Leadership of the Diyala Branch of the Ba'ath Socialist Party which states that punitive action is to be taken against any local officials who fail to stem the flow of Kurdish families into their territory, and that any citizen providing employment, food or shelter to a newly arriving Kurd is to be arrested.

28. The Government of Iraq has reportedly been using other measures aimed at encouraging departures and preventing displaced persons from returning. The Government has reportedly declared the area around Kirkuk, including the oil-fields and production facilities, a military and security zone and has mined the area to impede transit. The roads into the area have been heavily fortified with military checkpoints. The regime has also changed the administrative composition of Kirkuk governorate, eliminating four predominantly Kurdish districts and effectively reducing the Kurdish population to minority status. Most recently, the Iraqi Government has reportedly evicted the residents of Kirkuk's citadel and begun the demolition of this ancient Kurdish site, claiming that the envisioned new construction will generate considerable tourist revenue.

III. THE RIGHT TO FOOD AND HEALTH CARE

29. Since the Special Rapporteur took up his mandate in 1991, he has constantly reported on the food and health situation in Iraq. The Special Rapporteur has concluded that the Government of Iraq has failed to comply with its obligations under articles 2, 11 and 12 of the International Covenant on Economic, Social and Cultural Rights insofar as it has not taken appropriate steps "to the maximum of its available resources", including "through international assistance and cooperation", with a view to achieving the full realization of the right to an adequate standard of living, including adequate food, clothing, housing and good health, and to the continuous improvement of living conditions. In this connection, the Special Rapporteur has stressed, on the one hand, the refusal of the Government of Iraq to take advantage of the "oil-for-food" solution until 1996 and, thereafter, its lack of full cooperation in its implementation, and, on the other hand, the Government's failure to ensure the end of the sanctions regime by complying with all relevant Security Council resolutions.

30. On 19 November 1998, the Secretary-General issued a report (S/1998/1100) on the implementation of the humanitarian programme in Iraq. The Special Rapporteur noted that the "oil-for-food" programme has helped to provide a more adequate food basket for the Iraqi people. For the first time since the beginning of the programme, the full rations of 2,030 kilocalorie per person per day were distributed during three consecutive months and in 97 per cent of households consulted in the centre and south the food baskets were received on time. But given the complex interplay of food supply, health and hygiene

issues, the full nutritional benefit of extra foodstuffs could not yet be realized - especially taking into account real and significant differences in need throughout the population.

31. In his report the Secretary-General reported that the latest survey, based on WHO/Centres for Disease Control and Prevention (CDC) reference criteria, indicated that during the past year general malnutrition among infants had stabilized at 14.7 per cent and at around 25 per cent for children under five. This indicates that, following the implementation of Security Council resolution 986 (1995), previously rising levels of malnutrition appear to have stabilized. However, in the centre and south of Iraq, infant malnutrition continues to be of grave concern. In the three northern governorates, the improvement noted from 1994 onwards has been sustained. With regard to the high prevalence of malnutrition, especially among children, the Secretary-General expressed his regret that, to date, the Government of Iraq had not sent any applications for targeted nutrition supplies, i.e. protein biscuits and therapeutic milk, although they were included in the distribution plan.

32. Moreover, household visits by observers from the World Food Programme (WFP) in the south and centre of Iraq showed nearly two thirds of households reporting that the food basket lasted only 20 days or less. It was also reported that, in the centre and south of Iraq, food prices on the open market had risen, to the disadvantage of the very poor, due to major shortages of inputs for domestic food production.

33. It was also reported that United Nations observers had endeavoured to verify that distribution and access to the rations was equitable in Nasiriyah in southern Iraq, in response to allegations of involuntary population displacements in September 1998. The report indicated that initial results were inconclusive. The Special Rapporteur has already reported on the discriminatory registration procedure in several previous reports. Considering that a certificate attesting more than six months' residence is compulsory to be entitled to the food ration, it is highly unlikely that the forcibly displaced families in the southern governorates are actually receiving their rations.

34. In the health sector, an increasing influx of supplies had expanded the range of treatments available and drugs were more widely available at all levels of the health-care system. Hospital inpatient departments were generally receiving sufficient quantities of medicines and supplies, and in all types of health facilities there had been a steady increase in patient attendance. But the poor condition of facilities continued to pose a genuine health hazard. It was reported that the number of surgical operations increased by 33 per cent from January to August 1998. Preventive health care, however, had not received appropriate attention. In this field the full range of urgently needed essential drugs was still not available on a regular basis, mostly because of poor procurement planning and stock management. Major problems were also encountered in ensuring the timely distribution of the hospital equipment that had been received under the programme.

35. The non-availability of clean water remained a serious problem in some areas. Since the source of most of the drinking water in Iraq is

surface-water coming from the Tigris and Euphrates rivers, most of the water systems require liquid chlorine and alum treatment. According to a UNICEF document addressed to potential donors in June 1998, Iraq previously had an advanced water treatment system serving urban and major rural areas. However, after 1990, the per capita share of water decreased drastically from 330 to 180 litres per day in Baghdad city, from 270 to 135 litres per day in other urban areas and from 180 to 60 litres per day in rural areas. The quality of available water has also greatly deteriorated, due to the progressive deterioration both of water treatment plants and the water distribution network. In late 1997 it was estimated that the sector would require $500-600 million for the most urgent rehabilitation. Although more than $250 million have been allocated to the sector since the beginning of the programme, only $11.6 million in supplies (less than one half of 1 per cent) have actually reached the intended sites because of the incompatibility between supplies delivered and contracts signed, and the lack of cash, transportation and qualified technicians required to implement the programme. Inputs therefore tend to have a localized impact, which cannot offset the continuing structural deterioration of the sector as a whole. Nevertheless, there has been some improvement, especially in water quality, as increased quantities of chlorinated water are being produced. However, the decaying distribution network precludes guaranteed safe drinking water and water-borne diseases continue to be a major threat.

36. On 17 December 1998, a joint military operation, conducted by United States and United Kingdom forces, resulted in four days of air strikes against Iraq. According to media reports and local sources, targets in and around the cities of Baghdad, Basra, Kirkuk and Tikrit were subjected to aerial bombardment. However, the civilian populations living in these cities appeared to continue their daily occupations; the markets remained open. Official Iraqi reports indicate that a warehouse was hit, destroying 2,600 tonnes of rice, and that an agricultural high school and the Ministry of Labour and Social Affairs were also hit. As well, numerous schools, clinics and hospitals close to buildings which were hit by missiles suffered broken windows, displaced ceiling panels and damaged light fittings. The Government of Iraq has complained about substantial damage to civil structures and loss of life.

37. The Special Rapporteur notes that the United Nations personnel on the ground have not been allowed by the Iraqi authorities to carry out an assessment of the damage caused by the air strikes especially any direct or collateral damage to facilities of the United Nations Office for the Iraq Programme (OIP) which fall under the mandate of the United Nations humanitarian programme. In a note verbale dated 26 December 1998 addressed to the United Nations Humanitarian Coordinator, the Minister for Foreign Affairs of Iraq stated, inter alia, that the conditions experienced by Iraq did not permit an assessment of the damage and that Iraq would conduct such an assessment in the manner it deemed appropriate. Consequently, it was not possible to carry out the assessment requested by Security Council members. Only local staff from UNICEF, WFP and the Geographical Observation Unit in Iraq made a limited assessment.

38. On the general humanitarian situation, the Special Rapporteur was informed that during the above-mentioned period all United Nations

observations were suspended. However, the implementation of the distribution plan was not affected by the events nor were oil exports interrupted. On 12 January 1998, United Nations humanitarian observation activities resumed - although international observers were deployed on day trips only. The areas therefore left unobserved included the southern governorates.

39. Information provided to the Special Rapporteur indicates that the food stock levels were much improved. With regard to the food basket, the Special Rapporteur has been informed that as of January 1999 the government ration was to include, for the first time, full-cream milk, cheese and weaning cereals. The allocations provided in Distribution Plan for Phase IV ($10 million for weaning cereals and $178 million for full-cream milk and cheese) have been fully contracted.

40. With regard to the provision of health-care services, there has been no noticeable change. However, stocks of medicines and medical supplies have not been distributed as efficiently as required and the full nutritional benefit of extra foodstuffs has not yet been realized. Unfortunately, United Nations reports indicate that a very large quantity (over $250 million) of available medical supplies remain stacked in warehouses.

41. The Special Rapporteur is concerned that the Government of Iraq has still not taken full advantage of the food and health-care resources available through the "oil-for-food" arrangement. For example, as already indicated above, the Government of Iraq has not yet concluded contracts to the full value of available resources for the purchase of high protein biscuits or therapeutic milk. Another example involves medicines for the treatment of leukaemia: there have so far been two contracts approved by the 661 Committee (under Phase III) which were only recently cleared for funding. More generally, OIP reports that it continues to be concerned about the rate of distribution of medicines and is working with the Government on this issue.

42. Overall, the Special Rapporteur observes that there persist problems with the adequacy and equity of distribution of available resources. The Special Rapporteur notes that distribution priorities and criteria are generally established by the Government of Iraq (see, for example, document OIP/AOS/2/Add.1, para. 1), and "equity" is generally assessed within those same parameters established by the Government (see paragraphs 33 and 34 of WFP's background note appended to the aforementioned OIP report). At the same time, OIP reports that there are variations even within the terms of the Government's own criteria, indicating a worse situation in the southern governorates (e.g. the especially poor sewage systems in the 10 most southern governorates, as reported in document OIP/AOS/2 at paragraph 16). This is apart from the broader situation and the relative effects of the market and of government programmes other than the United Nations programme: again, the available resources are not being channelled to people in the southern governorates, who are the worst off and in the greatest need. In this connection, the Special Rapporteur notes the Government's refusal to provide OIP with any information on its efforts to supplement the food basket (as pointed out by Mr. Benon Sevan, Executive Director of the Iraq Programme, to the Security Council on 23 November 1998). Further, the Special Rapporteur notes the new guidelines established by the Iraqi Ministry of Trade according to which United Nations humanitarian observers are prohibited from knocking on

doors to initiate interviews with householders, thus limiting the ability of the United Nations fully to assess the real adequacy and equity of food supplies and health care.

43. The Special Rapporteur remains concerned about the adequacy of the resources made available through the "oil-for-food" programme and by the Government of Iraq to meet the nutritional and health-care needs of the population throughout the country. The Special Rapporteur underlines that, according to article 11 of the International Covenant on Economic, Social and Cultural Rights, Iraq is to act "individually and through international cooperation" to realize the right of everyone to an adequate standard of living (including adequate food), while article 12 of the same Covenant binds Iraq to act in the same way to achieve the full realization of the right of everyone to the "highest attainable standard of physical and mental health". The Special Rapporteur observes that the fulfilment of these obligations must respond to real needs which no doubt vary among the overall population. In this respect, insistence by the Government of Iraq on distribution of an identical food basket throughout the country, notwithstanding considerable variations in real needs, cannot be equated with an "equitable" distribution nor with fulfilment of Iraq's specific obligations under international human rights law. As previously reported, the Special Rapporteur remains concerned that the greater needs among the population of the southern governorates, in terms of their specific nutritional needs and their comparative inability to obtain supplies from the market, are not adequately addressed either under the terms of the "oil-for-food" programme or under other programmes administered by the Government of Iraq from its other resources.

IV. RIGHTS OF THE CHILD

44. On 23 and 24 September 1998, the Committee on the Rights of the Child established under the Convention on the Rights of the Child considered the initial report of the Government of Iraq on the implementation of the Convention within its jurisdiction (CRC/C/41/Add.3). Following two days of debate, the Committee issued, on 26 October 1998, its concluding observations (CRC/C/15/Add.94).

45. The Committee took note of the fact that the Convention is self-executing within the State party and that its provisions may be invoked before the courts. It also welcomed the development of a National Plan of Action for Children. However, the Committee was still concerned that the provisions and principles of the Convention were not fully reflected in law and that law enforcement in all areas covered by the Convention should be strengthened.

46. The Committee expressed concern that insufficient attention has been paid to allocating budgetary resources in favour of children to the maximum extent available and, where needed, within the framework of international cooperation and recommended that the Government of Iraq prioritize budgetary allocation to ensure the protection of the economic, social and cultural rights of children, especially taking into account articles 2, 3 and 4 of the Convention. In this regard, the Committee also recommended that the State party seek to eliminate the disparities between urban and rural areas and between governorates.

47. In the light of the provisions and principles of the Convention, especially the principles of the best interests of the child (art. 3) and the right to life, survival and development (art. 6), the Committee expressed its deep concern at the early legal minimum age of voluntary enlistment into the armed forces and recommended that the State party raise the age in the light of international human rights and humanitarian law.

48. The Committee also expressed concern that corporal punishment is not expressly prohibited in domestic legislation and recommended that the State party take all appropriate measures, including of a legislative nature, with the aim of prohibiting corporal punishment at all levels of society.

49. The Committee noted with grave concern the deteriorating health situation of children, particularly the high and increasing infant and child mortality rates and serious long-term malnutrition, aggravated by poor breastfeeding practices and common childhood diseases.

50. The Committee was also concerned at the number of children leaving school prematurely to engage in labour (particularly girls) and recommended that all appropriate measures be taken to provide equal access to education and to encourage children (particularly girls) to stay in school and to discourage early entry into the labour force.

51. The Committee noted with concern that the economic exploitation of children has increased dramatically in the past few years. In this regard, the Committee expressed its concern about the existing gap between the age at which compulsory education ends (12 years) and the minimum legal age for access to employment (15 years).

52. The Committee was further concerned at the situation with respect to the administration of juvenile justice and in particular its incompatibility with the Convention, as well as other relevant United Nations standards. The Committee recommended that the Government of Iraq consider taking additional steps to reform the system of juvenile justice in the spirit of the Convention (in particular articles 37, 40 and 39) and of other United Nations standards in this field, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) and the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty. The Committee stressed that particular attention should be paid to considering deprivation of liberty only as a measure of last resort and for the shortest possible period of time, to the protection of the rights of children deprived of their liberty, to due process of law and to the full independence and impartiality of the judiciary.

V. PERSONS MISSING AS A RESULT OF THE IRAQI OCCUPATION OF KUWAIT

A. Investigation of cases

53. A staff member from the Office of the High Commissioner for Human Rights, acting as a human rights monitor in the framework of Commission resolution 1998/65, undertook a visit to Kuwait in December 1998. During his stay in Kuwait, the monitor met with a wide variety of persons of special

relevance to the continuing problem of Kuwaiti and third-country nationals who disappeared during or subsequent to their arrest and detention by Iraqi forces illegally occupying Kuwait between 2 August 1990 and 26 February 1991. Among those interviewed were representatives of the Kuwaiti National Committee for Missing and Prisoner of War Affairs and family members of the Kuwaitis who are missing. In total, the monitor interviewed more than 20 family members of the missing Kuwaitis, including persons who had remained in Kuwait during the occupation.

54. It is to be noted that, while the original number of those missing after the withdrawal of the Iraqi occupying forces was in the thousands, over time concern was focused on a list established by the Government of Kuwait comprising 625 individual files of which 604 cases still remain unresolved. The list had been compiled by the Kuwaiti Government's National Committee on the basis of specific guidelines established by the International Committee of the Red Cross (ICRC). The files were compiled taking into consideration three different sorts of evidence: (a) accounts from family members, of whom several claim to have witnessed the arrest of their relatives; (b) testimonies of former detainees (including foreigners) who claim to have seen some of those who have disappeared inside prisons or detention centres; and (c) Iraqi documents relating to those missing, which were said to have been found after the withdrawal of the Iraqi forces occupying Kuwait.

55. The cases on the list of missing Kuwaitis concern persons from various social strata and of different ages; most (90 per cent) of the disappeared on the list are of Kuwaiti nationality. The majority are civilians, including youths and a number of elderly persons. The total includes seven women. Among those listed are also persons of special status, such as the case of a Ba'athist and former member of the Kuwaiti Parliament, Mr. Al-Sanea, and his family. The majority of the cases checked are well documented.

B. Findings

56. The information received confirms in a wholly consistent manner the testimonies and other evidence previously reported. According to the testimonies recently and previously received, the procedures used by Iraqi authorities to arrest Kuwaiti citizens varied and arrests took place in all kinds of locations. While each case has unique elements, most cases involved one of the following: assaults on private homes; arrests by Iraqi patrols at Saudi-Kuwaiti border crossings; and arrests at Iraqi checkpoints inside occupied Kuwait.

57. Assaults on private homes usually took place with Iraqi soldiers (who were often recognized as Republican Guards) first surrounding the house. Members of either Iraqi Military Intelligence or the Security Services would then carry out the arrest during a search of the house. Beatings during arrest were said to be commonplace. Generally, these raids were said to have been based on precise information with the Iraqi forces frequently reported to be looking for specific persons. Several of the persons arrested were known to belong to opposition groups. Some of them were released later, others escaped during the March 1991 uprisings in southern Iraq and others remain missing today.

58. With respect to arrests by Iraqi patrols at Saudi-Kuwaiti border crossings, many families were outside or quickly fled Kuwait when the invasion took place on 2 August 1990. As most of the borders were then closed, except that with Iraq, people fleeing the occupation were forced to leave Kuwait illegally through the desert. However, once the Iraqi forces had been deployed along the Kuwaiti borders, persons seeking to return to Kuwait are believed to have been arrested while crossing the Saudi-Kuwaiti frontier. Despite the fact that these cases are less well documented than others because there were no witnesses to the arrests, testimonies have been received from former prisoners of war stating that they had seen the arrested persons inside prisons or detention centres in Iraq.

59. Several persons were arrested at checkpoints deployed on the main streets of occupied Kuwait to prevent freedom of movement and to control real or potential resistance. Some of the arrested persons have since disappeared.

60. Many people, both Kuwaitis and non-Kuwaitis, were taken prisoner during the fighting that accompanied the invasion and its immediate aftermath. Those imprisoned included members of the armed forces as well as people working in the Kuwaiti administration. Military and administrative personnel captured during this early period were taken to Iraq and some of them were released after the liberation of Kuwait when the ICRC visited detention centres in Iraq.

61. A second group of persons was arrested as the Iraqi occupation continued. Some of this second group were members of the military or police forces while others were civilians (e.g. students and public administrators), including foreigners allegedly involved in opposition activities.

62. A third group is said to have been arrested at the very end of the occupation. Most of these persons were reportedly Kuwaitis arrested in public places.

63. As for the alleged reasons for the arrests, it appears that in most cases the persons said to have been arrested were suspected of some form of opposition against the Iraqi occupation. Resistance to the Iraqi occupation was very largely interpreted by Iraqi forces without any distinction as to whether it was passive or active, violent or non-violent opposition. The following reasons for the arrests were reported: (a) possessing arms or ammunition; (b) forging driving licences, car registration books, ID cards; (c) publishing and distributing resistance newsletters or spraying anti-Iraqi graffiti on walls. In some cases, people were apparently arrested for belonging to humanitarian groups and solidarity associations. People distributing food and basic needs to citizens and doctors who treated resistance members were also said to have been arrested. As mentioned above, another group was allegedly arrested while crossing the Saudi-Kuwaiti border, perhaps on charges of illegal exit or entry. Among the documented cases, there are only a few where no alleged reason for arrest is given.

64. Interviewed persons consistently reported that those arrested did not have access to lawyers and were not allowed to contact their families. Families looking for arrested relatives were normally not informed about their whereabouts, except in a very few cases.

65. Today, well over eight years after the Iraqi occupation, the main preoccupation of the relatives of those who disappeared, is the present whereabouts of their loved ones: are they still detained in Iraq (as was the case for many who were subsequently released or who escaped), or, in the event that they have been released or have perished, what details can be communicated to the distraught families?

66. The Special Rapporteur observes that the human tragedy of this unresolved matter is enormous, both in terms of any remaining detainees who are no doubt suffering untold emotional anguish and possibly enduring physical hardship, and in terms of the families of the missing persons who are suffering severe mental distress because they are without knowledge of the whereabouts and condition of their loved ones. The relatives of the missing persons also report that they are regularly subjected to extortion attempts that play upon their desires to learn something about those missing. As a result of the never-ending uncertainty and the unresolvable pain and depression, the social lives, employment performance and personal relationships of family members have all been damaged. This says nothing about the material losses, especially for families who have lost their main breadwinners. In addition, it is to be observed that such a large number of cases for a small country constitutes a source of suffering and loss for the Kuwaiti people as a whole and an unhealed wound inflicted by the illegal Iraqi occupation.

C. The institutional framework for continuing follow-up

67. The international community responded to this specific humanitarian problem by creating, in March 1991, a Tripartite Commission on Missing Persons pursuant to Security Council resolutions 686 (1991) and 687 (1991). Chaired by the ICRC, the Tripartite Commission is composed of the Governments of Kuwait, Saudi Arabia, the United States of America, the United Kingdom and France on one side, and the Government of Iraq on the other. At the first meeting of that Commission, all members signed a memorandum committing themselves to the full implementation of the provisions of the Geneva Conventions of 1949, to the terms of the above-mentioned Security Council resolutions, and to the presentation of a complete list of the names of the missing persons and other detainees, preparatory to securing their prompt release.

68. Following the early meetings of the Commission, a number of "missing persons" were handed over to the ICRC. Others were freed during the uprising in southern Iraq during the turmoil that followed the liberation of Kuwait. Some 6,000 Kuwaiti persons found their way home through these channels (5,772 repatriated by the ICRC and about 500 by their own means). After the initial successes, it became evident that many persons were still missing. In April 1991, under the direction of the ICRC, the Commission adopted a Plan of Action for the repatriation of mortal remains and the tracing of those still unaccounted for.

69. To the knowledge of the Special Rapporteur, the Government of Iraq has failed to demonstrate a genuine concern for those who are still missing. Indeed, between October 1991 and July 1994, it even failed to attend the

meetings of the Tripartite Commission. In July 1994, the Government of Iraq renewed its participation in the framework of the Commission, only to fail again in recent months to attend the scheduled meetings.

70. On 8 December 1994, the Tripartite Commission established a Technical Subcommittee to conduct the detailed technical work relating to investigations and inquiries concerning the missing persons. The Technical Subcommittee is entrusted with the tasks of accelerating the search process, facilitating exchanges of information related to the established and detailed case-files, implementing follow-up action based on the results of search activities and building confidence among the parties.

71. While the Tripartite Commission is to meet every three months in Geneva, the Technical Subcommittee is to meet on a monthly basis on both sides of the Iraqi-Kuwaiti border. Since August 1995, it has held more than 30 meetings, but the meetings have failed to produce significant results.

72. According to the information received, between August 1994 and July 1995, the Government of Iraq supplied incomplete replies to 112 individual files. From July 1995 to the end of 1998, the Government supplied a total of 14 more replies; the last was received over two years ago. Moreover, Iraq has failed to produce needed additional information to clarify these cases even though, in the incomplete replies provided, Iraq admitted having seized and deported most of the prisoners during its occupation of Kuwait. The lack of replies on the 479 unresolved files is another example of the failure of the Government of Iraq to respect a mandated exchange of information and to abide by its own undertakings.

73. In fact, to date, out of the 625 case-files, only three cases have been clarified. In one case, the Iraqi Government admitted that a Kuwaiti prisoner died in jail during the occupation and was buried in Kuwait; for 14 months after receiving this information, Iraq refused to send someone to Kuwait to help locate the gravesite, and when it finally agreed to do so, its envoys were unable to help. (It took another year before the Iraqi authorities agreed to send one of the persons who actually participated in the burial, who in any case failed to identify the place.) Until very recently, the Iraqi authorities have consistently rejected the Subcommittee's requests to meet Iraqi witnesses or to contact them through the ICRC, alleging that they were either dead or unknown to authorities.

74. For almost all the cases to which the Government of Iraq has so far responded, the replies regarding the individual files are reported to be evasive. Indeed, based upon information received during the mission of the United Nations monitor to Kuwait, despite the Iraqi authorities admitting to having arrested and detained some of the missing Kuwaitis, the Government of Iraq claims to be ignorant of the specific relevant authority or military unit operating at the time and place where the person disappeared. The Government further claims that the files that could have been useful to determine the fate of the missing persons were destroyed during the Iraqi retreat from Kuwait and that many of the relevant units were subsequently dissolved and many of their members retired from the armed forces. Therefore, the Government of Iraq maintains, based upon information collected verbally from

the responsible officers after the 1991 uprising in southern Iraq, the detainees must have escaped in the confusion that prevailed in the southern governorates at the time.

75. Based upon information received by the Special Rapporteur, the specific military units responsible in the areas where the arrests and disappearances occurred have now resorted to pro forma responses, admitting only to having arrested and detained some of the still-missing Kuwaitis. Some have participated in initial investigations into some of the cases.

76. The Special Rapporteur observes that the Government of Iraq has failed to respect its obligations to cooperate with the Tripartite Commission or its Technical Subcommittee. Specifically, in recent months the Government of Iraq has refused to attend the scheduled meetings of either body (see, for example, ICRC Press Release No. 99/07 of 2 February 1999). The Government of Iraq has explained that the basis for its refusal to participate is its objections to the participation of the representatives of the United States of America and the United Kingdom (see the Press Release of the Permanent Mission of Iraq to the United Nations of 3 February 1999). The Special Rapporteur notes that the Government's refusal to cooperate in this matter is contrary to the provisions of paragraph 30 of Security Council resolution 687 (1991).

D. Conclusions

77. There can be no doubt that many persons disappeared during or subsequent to the Iraqi occupation of Kuwait. Insofar as the disappearances occurred during the illegal Iraqi occupation of Kuwait, there can also be no doubt of the general responsibility of Iraq for the fate of these persons and for the effects of their disappearance on their families. Detailed testimonies and other corroborative evidence further establishes the specific responsibility of Iraqi forces and authorities in relation to many individual cases. From the point of view of the missing and their relatives, however, the question arises whether these persons are still detained in Iraq.

78. The Special Rapporteur stresses that Iraq is under an obligation to provide substantive replies on the individual files without further delay. It is to be recalled in this connection that, in its resolution 46/135, the General Assembly called upon Iraq in the following specific terms to cooperate in the search for those who are missing:

> "4. ... to provide information on all Kuwaiti persons and third country nationals deported from Kuwait between 2 August 1990 and 26 February 1991 who may still be detained and ... to release these persons without delay;
>
> "5. ... to provide ... detailed information on persons arrested in Kuwait between 2 August 1990 and 26 February 1991 who may have died during or after that period while in detention, as well as on the site of their graves;
>
> "6. ... to search for the persons still missing and to cooperate with international humanitarian organizations, such as the International Committee of the Red Cross, in this regard;

"7. ... [to] cooperate with and facilitate the work of international humanitarian organizations, notably the International Committee of the Red Cross, in their search for and eventual repatriation of Kuwaiti and third-country national detainees and missing persons."

79. The Special Rapporteur observes that, in accordance with the applicable rules of international law, Iraq must account for those who were arrested by its forces. If Iraq is still holding prisoners of war and civilian internees, a premise the Iraqi authorities deny, several basic human rights embodied in the International Covenant on Civil and Political Rights would be violated. In any case, Iraq has failed:

(a) To inform families about the whereabouts of persons arrested in Kuwait, or to give arrested persons the right to contact their families;

(b) To provide information about death sentences imposed on prisoners of war and civilian detainees, as required by articles 101 and 107 of the Third Geneva Convention of 12 August 1949 and articles 74 and 75 of the Fourth Geneva Convention of 12 August 1949;

(c) To issue death certificates for deceased prisoners of war and civilian internees and to provide information about graves in accordance with articles 120 and 121 of the Third Geneva Convention of 12 August 1949 and articles 129 to 131 of the Fourth Geneva Convention of 12 August 1949.

80. To comply at least with the above obligations, the Government of Iraq has the responsibility to do everything within its powers to explain the fate of the hundreds of persons who remain missing as a result of its illegal occupation of Kuwait. In view of the Government's failure to come forth with adequate information, it should give every opportunity for independent and impartial third parties, such as the ICRC, to search within Iraq; this would entail full and free access to all places and persons of interest, at least according to standard ICRC practice.

81. In addition to the violations of international humanitarian law referred to above, the Government of Iraq has failed to demonstrate genuine concern for those who remain missing insofar as it has yet to participate fully and in a cooperative spirit either with the Governments involved or with the international humanitarian organizations that are seeking to resolve the cases on behalf of the next of kin. In particular, the Government of Iraq is failing even to attend the meetings of the Trilateral Commission established pursuant to the ceasefire that ended the armed conflict following the liberation of Kuwait.

VI. CONCLUSIONS AND RECOMMENDATIONS

82. At the beginning of 1992, the Special Rapporteur concluded that the gravity of the human rights situation in Iraq had few comparisons in the world since the end of the Second World War. The Special Rapporteur regrets that since then he has had no cause to change his view. The prevailing regime in Iraq has effectively eliminated the civil rights to life, liberty, physical integrity, and the freedoms of thought, expression, association and assembly; the rights of political participation have been flouted, while all available

resources have not been used to ensure the enjoyment of economic, social and cultural rights. Indeed, the Special Rapporteur has concluded that the politico-legal order in Iraq is not compatible with respect for human rights and, rather, entails systematic and systemic violations throughout the country, affecting virtually the whole population. In particular: President Saddam Hussein exercises executive and legislative power with judges and magistrates essentially answerable to him; the armed forces, the police and Ba'ath agents are at the service of the President; the courts are subject to the executive branch; political parties are banned, except for the Ba'ath Party which is identified with the State; there is no freedom of speech or action since the mere suggestion that someone is not a supporter of the President carries the prospect of the death penalty; and there is no freedom of information on radio or television, the most popular public media.

83. The established State structure, based on an omnipresent State party, the absence of a short-, medium- or long-term democratic project, and the fact that there is no institution capable of controlling the abusive exercise of power all lead the Special Rapporteur to conclude that the Iraqi people do not enjoy, and will not enjoy in the foreseeable future, respect for their human rights.

84. The Special Rapporteur observes that the continuing repression by the Government of Iraq of the civilian population of Iraq is in violation of Security Council resolution 688 (1991) which mandated "that Iraq, as a contribution to removing the threat to international peace and security in the region, immediately end this repression" (para. 2). In addition, Iraq's failure to resolve the outstanding cases of the over 600 persons of Kuwaiti and third-country nationality who disappeared during or subsequent to Iraq's illegal occupation of Kuwait and who are still missing is in violation of Security Council resolution 687 (1991).

85. With regard to the last matter, the Special Rapporteur recommends the following:

(a) The Government of Iraq should release immediately all those who are being held and it should reveal the names of all those who have died in its custody, in order to relieve the suffering of the relatives of the disappeared. In the cases of those who have died, the Government of Iraq should produce evidence of their deaths together with the precise whereabouts of their gravesites;

(b) The Government of Iraq should review, seriously and immediately, all the outstanding case-files of the missing persons, in view of the fact that more than six years have elapsed since the submission of these files;

(c) The Government of Iraq should invite the ICRC to carry out its mandate through full and unrestricted access to all Iraqi prisons and other detention centres, in accordance with the ICRC's methods of work, i.e. access to all detention centres without prior notice, access to all premises of each detention centre, the possibility for repeat visits to the same place and the possibility to interview prisoners in private without any witnesses.

86. Today, almost eight years after the establishment of his mandate, the Special Rapporteur notes that almost none of the recommendations contained in his earlier reports have been adopted by the Government of Iraq. The Government has also failed duly to cooperate with the Special Rapporteur during the last seven years, by not replying to any of the communications he has sent to the Government, by refusing to allow him to visit the country since 1992, and by refusing to accept the stationing of United Nations human rights monitors in Iraq.

87. Without firm determination on the part of the international community to respond substantially and meaningfully to the extremely serious violations referred to in this report, the tradition of impunity which prevails in Iraq will almost certainly continue. Its unfortunate consequences will be, inter alia, to encourage the continuing human rights violations, to dash hopes for the re-establishment of the rule of law including accountable government, and to jeopardize efforts to establish peace and stability in the region.

88. Considering the gravity and the complexity of the situation and on the basis of the foregoing, the Special Rapporteur reiterates all the conclusions and recommendations formulated in his previous reports submitted to the General Assembly and the Commission on Human Rights. In particular, the Special Rapporteur reiterates the need to implement his early proposal that a human rights monitoring mechanism comprised of United Nations staff be implemented throughout Iraq, thus providing a continuous flow of first-hand, impartial and verifiable information on the human rights situation. This mechanism is fully described in his 1992 report to the General Assembly (A/47/367). The Special Rapporteur emphasizes that implementation of such a mechanism would remove any doubt concerning the serious allegations received in relation to matters under the strict control of the Government of Iraq (and generally inaccessible to anyone else), such as the situation in southern Iraq. In this connection, it is to be noted that the United Nations has consistently supported implementation of a human rights monitoring mechanism in Iraq, notwithstanding the persistent refusal on the part of the Government of Iraq to accept United Nations human rights monitoring. In the absence of such a monitoring mechanism, and in the full knowledge of established past and current serious violations, including the prevailing repressive politico-legal order in Iraq, the Special Rapporteur can only conclude, with regard to the allegations received and the integrity of the conclusions drawn therefrom, that the presumption of veracity must lie with the allegations rather than with the Government of Iraq. In any event, the Special Rapporteur observes no improvement in the situation of human rights in Iraq. In sum, the prevailing regime of systematic and systemic human rights violations is contrary to Iraq's many international obligations and, as determined by the Security Council in resolution 688, remains a threat to peace and security in the region.